



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7209032

Date: FEB. 7, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a computer science researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver under the *Dhanasar* framework.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a professor of computer science at [redacted] University in South Korea. With respect to his prospective employment in the United States, the Petitioner provided a detailed statement regarding his future research plans and documentation of his communications with U.S. employers relating to their interest in hiring him for research and development positions.⁵ For the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that his proposed endeavor involves conducting research relating to system software and its implementation into commercial software products. He explained that he plans to continue his research aimed at developing software platforms for [redacted]

The record includes articles discussing the economic benefits of developing [redacted] wireless sensing systems, projected growth in the [redacted] technology and digital [redacted] markets, business benefits attributable to [redacted] transactions, and the expansion of [redacted] software applications. The Petitioner also provided information about mobile device security, Internet of Things [redacted] market opportunities, and the increasing demand for products and services in the [redacted] industry. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. In addition to the aforementioned information about projected market growth in [redacted] technologies, the Petitioner offered letters of support discussing the potential benefits of his proposed research and how

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner presented the official academic record for his Ph.D. in Computer Science and Engineering (2000) from [redacted] University [redacted] in South Korea and an academic credential evaluation indicating that the aforementioned degree is the foreign equivalent of a U.S. Ph.D. in Computer Science and Engineering.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about these positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

it stands to advance his field. For instance, [redacted] professor of computer science at the University of [redacted] explained that the Petitioner's research is aimed at finding "creative, software-based solutions to extending [redacted] and that this work seeks to "to improve [redacted] and computing performance" in a multi-billion dollar industry. Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through engineering journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed endeavor, we conclude that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes his curriculum vitae, academic records, published and presented work, patents, and documentation of articles that cited to his research findings. In addition, the Petitioner offered reference letters describing his expertise in computer science and his past record of success in that field.

We find that the Petitioner's past experience renders him well positioned to advance his proposed endeavor. Multiple expert references identify specific examples of how the Petitioner's work has impacted his field. For example, [redacted] stated that "[o]ne particularly influential contribution of [the Petitioner] is his development of a middleware software to manage the [redacted] of wireless computers." [redacted] explained that the Petitioner created "a novel [redacted] algorithm for real-time tasks" on multicore processors that "saves around 60 percent of the [redacted] by previous scheduling algorithms that relied upon executing individual tasks on a separate core."

With respect to the Petitioner's development of [redacted] scheduling algorithms, [redacted] professor and chair of the computer science and engineering department at University of [redacted] indicated that he is "one of the many scholars whose subsequent work has been predicated on concepts originating in [the Petitioner's] studies." [redacted] asserted that the Petitioner's "work offered an excellent framework for applying [redacted] scheduling to arbitrarily divisible loads" and that "[h]is development of the [redacted] and [redacted] scheduling approaches" effectively reduced computation time. Because of this reduction in computation time, [redacted] stated that he "based the task execution order of my algorithm on [redacted] scheduling, and I ensured that it was also applicable to [redacted] scheduling. Furthermore, I directly applied a metric [the Petitioner] developed since it was the best way to evaluate the performance of my algorithm."

Regarding the Petitioner's development of [redacted] software for mobile devices, [redacted] professor of computer science at [redacted] University, asserted that the Petitioner "offered a superior proof of concept that revealed the importance of being able to accurately predict and, indeed, guarantee [redacted] of a network. By balancing the residual [redacted] of the sensors, [the Petitioner] was able to achieve this sort of guarantee." [redacted] noted that his research team's findings on [redacted] routing for wireless sensor networks incorporated the Petitioner's "previous work on the subject into our routing scheme." He further indicated that the Petitioner's "findings have substantially advanced the state of research on these networks as well as their crucial [redacted] applications."

The record contains additional letters from researchers who state that they relied on the Petitioner's findings in their work. As corroborating documentation regarding the significance of his work, the Petitioner submitted citation evidence showing that his published work has been frequently cited by independent researchers, and that the rate at which his work has been cited is high relative to others in his field. In addition, he provided evidence indicating that various companies have commercialized or licensed his patented technologies. The aforementioned documentation helps demonstrate that the Petitioner is well positioned to advance his proposed research in the United States.

The Petitioner's experience and expertise in his field, published and presented work, citation evidence, record of success contributing to various research projects, technological innovations, and progress in computer science research position him well to advance his proposed endeavor. Accordingly, the record demonstrates that the Petitioner satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. As a researcher specializing in the development of [redacted] wireless mobile computers, [redacted] protection software for [redacted] systems, and [redacted] routing mechanisms for wireless computers, the Petitioner possesses considerable experience and expertise in computer science. The record also demonstrates the widespread benefits associated with research progress in [redacted] software platforms, [redacted] software for [redacted] and [redacted] technologies. In addition, the Petitioner has documented his past successes in advancing computer science research, and in publishing and presenting influential research findings. Based on the Petitioner's track record of successful research and the significance of that work to advance U.S. technological and commercial interests, we find that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.